

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

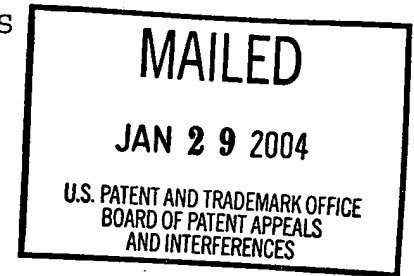
Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL B. BALL
and CHAD A. COBBLEY

Application No. 09/385,584



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on December 30, 2003. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

Appellant filed an Information Disclosure Statement (Paper No. 20) January 13, 2003. There is no indication on the record that the Information Disclosure Statement was considered by the

Examiner. A written communication notifying appellant of the Examiner's consideration is required.

On March 6, 2003, an Examiner's Answer was mailed (Paper No. 21). A review of the Examiner's Answer reveals that one of the appropriate headings entitled: Real Party in Interest, is missing from the Examiner's Answer. See Manual of Patent Examining Procedure (MPEP) § 1208 (8th ed., August 2001), p. 1200-18-19.

A further review of the Examiner's Answer reveals that the information contained therein pertaining to the required appeals conference is not in compliance with the Manual of Patent Examining Procedure (MPEP) § 1208 (8th ed., rev. 1, Feb. 2003). According to MPEP § 1208:

The participants of the appeal conference should include (1) the examiner charged with preparation of the examiner's answer, (2) a supervisory patent examiner (SPE), and (3) another examiner, known as a conferee, having sufficient experience to be of assistance in the consideration of the merits of the issues on appeal.

On the examiner's answer, below the primary examiner's signature, the word "Conferees:" should be included, followed by the type or printed names of the other two appeal conference participants. These two appeal conference participants must place their initials next to their name. This will make the record clear that an appeal conference has been held.

Application No. 09/385,584

The Examiner's Answer was not initialed or signed by the conferee's as required under MPEP § 1208.

Accordingly, it is

ORDERED that the application is returned to the examiner for:

1) appropriate consideration of the Information Disclosure Statement dated January 13, 2003;

2) the examiner to sign the form 1449, Information Disclosure Statement dated January 13, 2003;

3) correction and remailing of the Examiner's Answer to:

(a) include the required reference headings as identified in (MPEP) § 1208 (8th ed., August 2001), p. 1200-18-19;

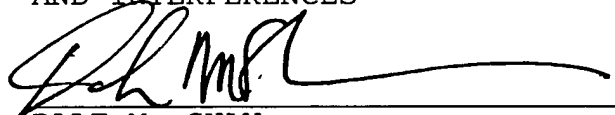
(b) acknowledge Appeals Conference by identifying the names, initials and/or signatures of all conferee's;
and

4) for such further action as may be appropriate.

Application No. 09/567,274

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

A handwritten signature in black ink, appearing to read 'D.M. Shaw', is written over a horizontal line.

DALE M. SHAW
Program and Resource Administrator
(703) 308-9797

DMS/dpv
RA04-0170

Application No. 09/385,584

Brick G. Power
Trask Britt & Rossa
P.O. Box 2550
Salt Lake City, UT 84110